



U.S. Department
of Transportation
**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

February 11, 2020

Exemption No. 18479
Regulatory Docket No. FAA-2019-1028

CDR Jamie French
United States Navy
Commander Naval Air Forces (N455)
P.O. Box 357051
San Diego, CA 92135

Dear Commander French:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your request for exemption. It transmits the FAA's decision, explains its basis, and gives you the conditions and limitations of the exemption, including the date it ends.

The Basis for the FAA's Decision

By letter dated December 3, 2019, you petitioned the FAA on behalf of the United States Navy (USN) for an exemption from § 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations (14 CFR) to the extent necessary to allow the USN to increase current levels of lights-out Night Vision Device (NVD) training from low to medium altitudes in specific Military Operations Areas (MOA) close to USN installations.

The FAA has issued a grant of exemption in circumstances similar in all material respects to those presented in your petition. In Grant of Exemption No. 7960 (copy enclosed), the FAA found that the United States Air Force's use of Night Vision Goggles (NVG) provides an added level of safety because of the user's ability to detect conventional lighting at extended distances. The FAA believes, however, that despite this increased visibility during hours of darkness, NVGs effectively limit the user's peripheral vision and that using the NVG system during maneuvering may limit the user's vision to only the target or object in view.

The FAA believes that this reduced field of view during use of the NVG may lead to a lack of see-and-avoid capability. Therefore, the FAA finds that it is imperative that flightcrews using NVGs operate in monitored airspace or, when not operating in monitored airspace, operate in airspace within a prescribed area that is identified in a Notice to Airmen (NOTAM) that must be issued at least 48 hours before the lights-out operations are to begin. The NOTAM must be available to the civil aviation community and must be capable of being disseminated among civil users of the National Airspace System. The FAA also finds that persons monitoring flight operations activity must make pilots of participating aircraft aware of the presence of

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nonparticipating traffic. The monitoring of flight operations may be performed by military personnel not participating in NVG training activities (i.e., air traffic controllers, military radar personnel, airborne radar unit personnel, or pilots of nonparticipating aircraft observing the NVG training).

Having reviewed your reasons for requesting an exemption, I find that—

- They are similar in all material respects to relief previously requested in the enclosed Grant of Exemption No. 7960;
- The reasons stated by the FAA for granting the enclosed Grant of Exemption No. 7960 also apply to the situation you present; and
- For the reasons stated in the enclosed Grant of Exemption No. 7960, a grant of exemption to the USN is in the public interest.

The FAA's Decision

The FAA has determined that good cause exists for not publishing a summary of the petition in the Federal Register because the requested exemption would not set a precedent, and any delay in acting on this petition would be detrimental to the USN.

Under the authority contained in 49 U.S.C. 106(f), 40113, and 44701, which the FAA Administrator has delegated to me, I hereby grant the United States Navy (USN) an exemption from 14 CFR § 91.209(a)(1) and (b) to the extent necessary to allow the USN to increase current levels of lights-out NVD training from low to medium altitudes in specific MOAs close to USN installations, subject to the conditions and limitations below.

Please note that two conditions have been added to this exemption stating that the pilot of an aircraft engaged in operations herein is not relieved from the requirements of § 91.113 to see and avoid other aircraft and that the USN shall ensure that all aircraft used under this exemption are equipped with a Mode C transponder and that the transponder is operated on the appropriate code or as assigned by Air Traffic Control (ATC). These limitations have been added for consistency with similar exemptions already granted by the FAA.

Conditions and Limitations

1. Operations conducted under this exemption are limited to NVD flight training in the MOAs listed in ATTACHMENT 1 to this exemption. Operations must be conducted in accordance with the published operational times of the MOA.
2. The pilot of an aircraft engaged in operations herein is not relieved from the requirements of § 91.113 to see and avoid other aircraft.
3. Operations conducted in selected MOAs must be continuously monitored by military personnel to detect all nonparticipating aircraft. The monitoring must be accomplished

by radar capable of detecting nonparticipating aircraft, including those that may not be transponder-equipped and/or have a small radar cross-section, in the active volume of operational airspace.

4. Military personnel will immediately advise all participants when a nonparticipating aircraft has entered the active MOA. Participating aircraft will maintain a continuous listening watch on a designated frequency during lights-out operations. If a nonparticipating aircraft is determined to pose a threat of conflict or collision risk, all participating aircraft will immediately restrict their operations, return to normal lighting conditions, and alter course as necessary to ensure the safety of the nonparticipating aircraft.
5. All NVD flight training operations conducted under this exemption must be contained within a prescribed and publicized area that—
 - a. Is identified by name in a NOTAM that must be issued at least 48 hours before the lights-out operations are to begin. In other words, no person may operate an aircraft under this exemption unless a NOTAM concerning the lights-out operation was issued at least 48 hours before the lights-out operation. The NOTAM will advise that, during the course of flight planning, potential users of the MOA will be provided with information on the time and place of the proposed lights-out operations. The NOTAM must be made available to the civil aviation community and must be capable of being disseminated among civil users of the national airspace;
 - b. Has been coordinated with the appropriate geographically responsible FAA Air Traffic Control (ATC) facility; and
 - c. Has the capability of being monitored for nonparticipating traffic.
6. The USN must—
 - a. Establish a procedure to provide informational briefings to local flying organizations, businesses, and other civilian users within 100 nautical miles of the MOA airspace. These briefings must be provided on an annual basis and must be coordinated with the manager of the geographically responsible Flight Standards District Office. The intent of the informational briefings shall be to increase their awareness of lights-out operations and facilitate effective communications between the USN and the civilian users of the MOA airspace;
 - b. Develop procedures to provide advisories to transient operators of the MOAs to notify them that selected MOAs are in use for lights-out operations. The use of the Automatic Terminal Information Service may be sufficient only if such transmissions can reach all air traffic operating within the selected MOA. Some notifications may be made through the use of NOTAM/special notices disseminated at least 48 hours in advance of scheduled exercises. Other procedures may be

applicable based on the location of the MOA and proximity to airports, FAA facilities, and potential aircraft and operators; and

- c. Develop a letter of agreement (LOA) for lights-out operations in MOAs. The LOA must be coordinated with and agreed to by the FAA ATC facility that has geographic responsibility for the airspace to be used and must include—
 - i. Procedures for the immediate termination of lights-out operations in the event of conflicting, nonparticipating traffic;
 - ii. Procedures for the immediate termination of lights-out operations if a lights-out aircraft spills out of the MOA;
 - iii. Procedures for the loss of communications;
 - iv. The type of aircraft and/or USN unit(s) to be conducting lights-out training operations;
 - v. A way of notifying the geographically responsible FAA ATC facility upon activation and termination of lights-out operations to ensure that FAA ATC is aware of the activities in the MOA;
 - vi. The geographical boundaries, altitude restrictions, and the name of the MOA in which operations under this exemption are authorized; and
 - vii. Procedures for loss of radar contact.
7. The USN shall ensure that all aircraft used under this exemption are equipped with a Mode C transponder and that the transponder is operated on the appropriate code or as assigned by Air Traffic Control (ATC).
8. Each pilot who participates in operations conducted under this exemption must be thoroughly familiar with its provisions.
9. Failure to comply with all of the provisions of this grant of exemption may result in a revocation or cancellation of this grant of exemption
10. This exemption is not valid for operations outside of the United States.

If you request an extension to this exemption, please submit your request by using the Regulatory Docket No. FAA-2019-1028 (<http://www.regulations.gov>). In addition, you should submit your request no later than 120 days prior to the exemption's expiration date listed below.

If you require an amendment to this exemption, please submit your request no later than 120 days prior to the date you need the amendment using the process indicated above.

Any extension or amendment request must meet the requirements of § 11.81 of 14 CFR.

This exemption terminates on January 31, 2022, unless sooner superseded or rescinded.

Sincerely,

/s/

Robert C. Carty
Deputy Executive Director, Flight Standards Service

Enclosure

ATTACHMENT 1 to Conditions and Limitations Number 1
FAA Exemption 18479

2020 MOA List for USN/Marines Operations

Able

Carson

Churchill

Dome

Fallon

Kane

Lemoore

Ranch

Quail